



SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-779; OMB Control No. 3235-0732]

Submission for OMB Review; Comment Request: Extension: Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants

Upon Written Request, Copies Available From:

U.S. Securities and Exchange Commission

Office of FOIA Services

100 F Street N.E.

Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants.¹ (17 CFR 240.3a67-10, 240.3a71-3, 240.3a71-6, 240.15Fh-1 through 15Fh-6 and 240.15Fk-1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

In 2010, Congress passed the Dodd-Frank Act, establishing a comprehensive framework for regulating the over-the-counter swaps markets. As required by Title VII of the Dodd-Frank Act, new section 15F(h) of the Exchange Act established business conduct standards for security-based swap (“SBS”) Dealers and Major SBS Participants (“collectively “SBS Entities”) in their dealings with counterparties, including special entities. In 2016, in order to implement

¹ Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release 77617 (Apr. 14, 2016), 81 FR 29959 (May 13, 2016). See also Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants; Correction, Exchange Act Release 77617A (May 19, 2016), 81 FR 32643 (May 24, 2016). (together, ‘the Business Conduct Rules for SBSDs and MSBSPs’ or “BCS Rules”)

the Dodd-Frank Act, the Commission adopted the BCS Rules for SBS Dealers and Major SBS Participants,² a comprehensive set of business conduct standards and chief compliance officer requirements applicable to SBS Entities, that are designed to enhance transparency, facilitate informed customer decision-making, and heighten standards of professional conduct to better protect investors.³

Rules 15Fh-1 through 15Fh-6 and 15Fk-1 require SBS Entities to:

- Verify whether a counterparty is an eligible contract participant and whether it is a special entity;
- Disclose to the counterparty material information about the SBS, including material risks, characteristics, incentives and conflicts of interest;
- Provide the counterparty with information concerning the daily mark of the SBS;
- Provide the counterparty with information regarding the ability to require clearing of the SBS;
- Communicate with counterparties in a fair and balanced manner based on principles of fair dealing and good faith;
- Establish a supervisory and compliance infrastructure; and
- Designate a chief compliance officer that is required to fulfill the described duties and provide an annual compliance report.

The rules also require SBS Dealers to:

- Determine that recommendations they make regarding SBS are suitable for their counterparties.
- Establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each known counterparty that are necessary to conduct business with such counterparty; and
- Comply with rules designed to prevent “pay-to-play.”

² Id.

³ Commission staff has prepared separate supporting statements pursuant to the Paperwork Reduction Act (“PRA”) regarding final Rules 3a71-3(c) and 3a71-6, which address the cross-border application of the business conduct standards and the availability of substituted compliance. The Office of Management and Budget (“OMB”) has assigned control number 3235-0717 to Rule 3a71-3(c) and 3235-0715 to Rule 3a71-6. Rule 3a67-10(d) is a definitional rule and does not have a PRA burden associated with it. Rules 3a71-3(a), 15Fh-1 and 15Fh-2(b) and (c) address scope of the rules and definitions and so do not have PRA burdens associated with them.

The rules also define what it means to “act as an advisor” to a special entity, and require an SBS Dealer who acts as an advisor to a special entity to:

- Make a reasonable determination that any security-based swap or trading strategy involving a security-based swap recommended by the SBS Dealer is in the best interests of the special entity whose identity is known at a reasonably sufficient time prior to the execution of the transaction to permit the SBS Dealer to comply with this obligation; and
- Make reasonable efforts to obtain such information that the SBS Dealer considers necessary to make a reasonable determination that a security-based swap or trading strategy involving a security-based swap is in the best interests of the known special entity.

In addition, the rules require SBS Entities acting as counterparties to special entities to reasonably believe that the counterparty has an independent representative who meets the following requirements:

- Has sufficient knowledge to evaluate the transaction and risks;
- Is not subject to a statutory disqualification;
- Undertakes a duty to act in the best interests of the special entity;
- Makes appropriate and timely disclosures to the special entity of material information concerning the security-based swap;
- Evaluates, consistent with any guidelines provided by the special entity, the fair pricing and the appropriateness of the security-based swap;
- Is independent of the security-based swap dealer or major security-based swap participant that is the counterparty to a proposed security-based swap.

Under the rules, the special entity’s independent representative must also be subject to pay-to-play regulations, and if the special entity is an ERISA plan, the independent representative must be an ERISA fiduciary.

The information that must be collected pursuant to the BCS Rules is intended to increase accountability and transparency in the market. The information will therefore help establish a framework that protects investors and promotes efficiency, competition and capital formation.

Based on a review of recent data, as of 2020, the Commission estimates the number of respondents to be as follows: 44 SBS Dealers, 0 Major SBS Participants, for a total of 44 “SBS

Entities”.⁴ Further, we estimate that approximately 41 of these 44 SBS Entities will be dually registered with the CFTC as Swap Entities. We also estimate that there are currently 15,187 security-based swap market participants of which 11,531 are also swap market participants. In 2020, there were approximately 354,814 security-based swap transactions between an SBS Dealer and counterparty that is not an SBS Dealer of which 225,924 were new and 6,841 amended trades (totaling 232,765). The Commission estimates there are 329 independent, third-party representatives and 23 in-house independent representatives.⁵ We estimate that there are approximately 11,219 unique SBS Dealer and non-SBS-Dealer pairs. We have used these estimates in calculating the hour and cost burdens for the rule provisions that we anticipate have a “collection of information” burden within the meaning of the PRA.

The Commission estimates that the aggregate burden of the ongoing reporting and disclosures required by the BCS Rules, as described above, is approximately 486,535 hours and \$1,812,800 calculated as follows:

| Section | | Type of Burden | Respondents | Ongoing Annual Burden | Ongoing Annual Burden | Industry-wide Annual Burden | Industry-wide Annual Burden |
|---------------------|---|------------------------|-------------|-----------------------|-----------------------|-----------------------------|-----------------------------|
| | | | | Hours | Cost | Hours | Cost |
| 15Fh-3(b), (c), (d) | Disclosures - SBS Entities | Reporting | 44 | 4,120 | \$0 | 181,280 | \$0 |
| 15Fh-3(b), (c), (d) | Disclosures - SBS Transactions Between SBS Dealer and Non-SBSD Counterparty | Reporting | 232,765 | 1 | \$0 | 232,765 | \$0 |
| 15Fh-3(e), (f) | Know Your Counterparty and Recommendations (SBS Dealers) | Reporting | 44 | 128 | \$0 | 5,610 | \$0 |
| 15Fh-3(g) | Fair and Balanced Communications | Reporting | 44 | 2 | \$3,600 | 88 | 158,400 |
| 15Fh-3(h) | Supervision | Reporting | 44 | 540 | \$4,800 | 23,760 | 211,200 |
| 15Fh-5 | SBS Entities Acting as Counterparties to Special Entities | Reporting | 44 | 352 | \$0 | 15,488 | \$0 |
| 15Fh-5 | SBS Entities Acting as Counterparties to Special Entities | Third-Party Disclosure | 44 | 352 | \$0 | 15,488 | \$0 |
| 15Fh-6 | Political Contributions | Reporting | 44 | 1 | \$25,600 | 44 | \$1,126,400 |
| 15Fk-1 | Chief Compliance Officer | Reporting | 44 | 273 | \$7,200 | 12,012 | \$316,800 |
| | Total | | | | | 486,535 | \$1,812,800 |

⁴ Unless otherwise noted, estimates were derived from the DTCC-TIW data set (November 2006 through December 2020).

⁵ See, Exchange Act Rule 15Fh-5.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to

(i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street, NE, Washington, DC 20549, or by sending an e-mail to: PRA_Mailbox@sec.gov.

Dated: July 13, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022-15315 Filed: 7/18/2022 8:45 am; Publication Date: 7/19/2022]